

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE APPLICATION OF

ARIF EFENDI

FOR AN ORDER TO TAKE DISCOVERY

PURSUANT TO 28 U.S.C. 1782

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: 19 Misc. _____
:
: DECLARATION OF
: MARIO AIETA IN SUPPORT
: OF APPLICATION PURSUANT
: TO 17 USC ¶ 1872
:
:-----X

MARIO AIETA, declares under penalty of perjury:

1. I am an attorney admitted to practice in the State of New York and before this court and I am a member of the law firm of Satterlee Stephens LLP, attorneys for Applicant Arif Efendi. I make this Declaration based upon my own personal knowledge and upon information and documents provided to me that I know, or believe, to be true and accurate.

2. This Declaration is submitted in support of Efendi's Application for a Discovery Assistance Order pursuant to 28 U.S.C. § 1782(a).

3. Efendi is an individual residing in London, England. Efendi is affiliated with Doyen Sports Investment Limited, a Malta-based company that provides funding primarily to European football clubs.

4. Efendi seeks this Court's authorization to take discovery within this District for use in the prosecution of a proceeding now pending before the Court of Law for the 5th District Bucharest, 2nd Department for Civil Cases, Romania and, in a proceeding soon to be commenced in the District Court of Cyprus.

5. On December 21, 2108, Efendi, along with Doyen Sports Investment Limited and Arif Tevfik, commenced an action against Centrul Roman Pentru Jurnalism De Investigatie

(“CRJI”), before the Court of Law for the 5th District of Bucharest, File No. 27181/302/2018, asserting causes of action based on CRJI’s publication of stolen confidential and private information on the website www.theblacksea.eu (the “Romanian Action”). A hearing in the Romanian Action has been set for May 22, 2019.

6. At the time that the Romanian Action, Efendi and the other claimants also applied for interim relief. On January 23, 2019, the Court of Law for the 5th District Bucharest issued an order (the “Romanian Order”) on the motion for interim relief, finding that defendant CRJI: i) had published certain articles on its website found at www.theblacksea.eu, ii) that the articles were based on private and personal information obtained via a “an attack conducted by a hacker on the information systems of Doyen Sports,” and (iii) that “[t]hrough the articles published on the website theblacksea, confidential information and documents concerning the professional and private activity of the claimants were disclosed.” A copy of the Romanian Order, with a certified English translation, is attached to this Declaration at Tab A. The Court of Law for the 5th District Bucharest determined that the “illicit action” of publishing the subject articles on theblacksee.eu “causes a prejudice, which is difficult to remedy, to the reputation, image, dignity and freedom of the claimants” under both Romanian law and the European Convention on Human Rights. The 5th District Budapest accordingly issued an order “oblig[ing] the defendant [CRJI] to withdraw from the website www.theblacksea.eu the articles mentioned in the action” until the final resolution of case File no. 27181/302/2018.

7. After the Romanian Order issued, CRJI transferred ownership of the website www.theblacksea.eu to PrivActually LTD, an entity based in Cyprus. Attached to this Declaration at Tab B are the results of a WHOIS search conducted on April 9, 2019, at <https://whois.eurid.eu/en/search> for the name “theblacksea.eu.” The articles that the Romanian

court determined were injurious to “the reputation, image, dignity and freedom” of Efendi and the other claimants named in the Romanian Order have not been removed from theblacksea.eu after ownership of the site was ‘transferred’ to PrivActually Ltd.¹

8. PrivActually Ltd. runs a VPN (Virtual Private Network) service entitled IPredator. *See* Tab C (https://www.ipredator.se/page/contact#general_contact, accessed April 25, 2019 [“IPredator is incorporated as PrivActually Ltd.”]). The same “team of committed internet activists” also operates Njalla, a “privacy aware domain service.” *See* Tab D (<https://njalla.la>, accessed April 25, 2019). As the Njalla website explains:

We're not actually a domain name registration service, we're a customer to these. We sit in between the domain name registration service and you, acting as a privacy shield. When you purchase a domain name through Njalla, we own it for you. However, the agreement between us grants you full usage rights to the domain. Whenever you want to, you can transfer the ownership to yourself or some other party. *Id.*

9. Based on the above information, it appears that CRJI ‘transferred’ the ownership of theblacksea.eu to PrivActually Ltd. to disguise its continuing connection to theblacksea.eu and to avoid the Romanian Order.

10. On April 18, 2019, Efendi and the other claimants in the Romanian Action moved for preliminary relief against PrivActually based on the continuing publication of stolen confidential and private information on the website www.theblacksea.eu. A hearing on the request for preliminary relief against PrivActually has been set for May 20, 2019.

11. The DNS A record² for theblacksea.eu identifies DigitalOcean LLC as the host of theblacksea.eu website. A copy of the DNS A record for theblacksea.eu is attached hereto at Tab B.

¹ *E.g.*, compare Romanian Order, Aieta Decl. Tab A at p. 18 of 25 with <https://theblacksea.eu/stories/football-leaks/football-leaks-kazakh-moguls-the-pal-of-donald-trump-teen-models-and-the-yacht-of-the-father-of-the-turks/>, accessed April 15, 2019.

12. DigitalOcean LLC is a Delaware limited liability company (*see* Tab E) found in this district, with its principal office at 101 Avenue of the Americas, 10th Floor, New York, NY 10013. *See* Tab F at p. 29 (<https://www.digitalocean.com/legal/terms-of-service-agreement/>, accessed April 25, 2019).


13. Efendi seeks discovery from DigitalOcean LLC to establish in the now pending Romanian action and in the soon-to-be-pending Cypriot action that 1) CRJI, the defendant in the Romanian action, continues to control the content of the website at theblacksea.eu, 2) CRJI transferred the ownership of the website to PrivActually Ltd. after the commencement of the action that resulted in the Romanian Order, and 3) the webpages that CRJI has been ordered to take down pursuant to the Romanian Order are physically stored on a server located in the United States.

14. Attached hereto at Tab G is a proposed subpoena directed to DigitalOcean.

15. This Application is not being filed as a means of circumventing discovery limits under the laws of either Cyprus or Romania. I am not aware of any discovery limits imposed in the Romanian Action. I am not aware of any discovery limits that are likely to be imposed in the contemplated action in Cyprus.

I declare under penalty of perjury that the foregoing is true and correct.

April 25, 2019



Mario Aieta

² An "A record" is the Domain Name System record that maps a domain name to the IP address of the computer hosting the domain. *See* <https://support.dnssimple.com/articles/a-record/>, accessed April 10, 2019.